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1916 Phon. - Legal

Subpoena—Duces Tecum

The President of the United States of America, TO

Thomas A. Edison, as ~~president~~ of Thomas A. Edison, Incorporated, formerly National Phonograph Company, and ~~Ernest J. Berggren~~, as secretary of Thomas A. Edison, Incorporated, formerly National Phonograph Company,

[L. S.]

GREETING:

We Command You, That all business and excuses being laid aside, you appear and attend before Honorable Augustus N. Hand, one of the judges of the United States District Court for the Southern District of New York, at the Federal Building in the Borough of Manhattan, City of New York, in said Southern District of New York

on the 17th day of April, 1916, at 10.30 o'clock, in the fore noon, to testify and give evidence in a certain action now pending undetermined in the District Court of the United States for the Southern District of New York, between Missouri Phonograph Company, Plaintiff, and John C. Tomlinson, Millard F. Tompkins and John C. Tomlinson, Jr., *Defendant*s on the part of the defendants and that you bring with you and produce at the time and place aforesaid, a certain original letter dated March 27, 1909, addressed to National Phonograph Company and signed Tomlinson, Tompkins & Tomlinson; all checks drawn and delivered on or about April 8, 1909, in settlement of the case brought by the New York Phonograph Company and other cases brought by the Missouri Phonograph Company and other Phonograph Companies against the National Phonograph Company and others; the minute book of the board of directors of the New York Phonograph Company containing the minutes of the meeting of said board of directors held on or about April 8, 1909, also a certified copy of said minutes certified by the affidavit of James L. Andem and delivered to the National Phonograph Company or its attorneys or counsel on or about April 8, 1909.

now in your custody, and all other deeds, evidences and writings, which you have in your custody or power concerning the premises. And for a failure to attend, you will be deemed guilty of a contempt of Court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit TWO HUNDRED AND FIFTY DOLLARS in addition thereto.

WITNESS, the Hon. CHARLES M. HOUGH, Judge of the District Court of the United States for the Southern District of New York, at the Borough of Manhattan, City of New York, the 14th day of April, 1916.

Alexander Gilchrist Jr.
Clerk.

Guthrie, Bangs & Van Sinderen,
Attorneys for Defendants,
Tomlinson and others.

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442 money paid on April 3rd when the agreements were signed. That is right.

Mr. LeBarbier: I now offer the checks in evidence.

Marked Plaintiff's Exhibits 14 to 29.

FRANK L. DYER, on behalf of the plaintiff, testified, as follows:

Direct Examination by Mr. LeBarbier:

My full name is Frank L. Dyer. I am a lawyer and patent expert. My offices at the present time
443 are at 31 Nassau Street. In 1909 I was connected with the Edison interests. I was the General Counsel for the several interests of the Company in Orange, President of the National Phonograph Company, and the Executive Officer in the various other Edison Companies, that were engaged in the manufacture of phonographs, moving pictures machines, films, etc. I was familiar with the suit that was brought by the New York Phonograph Company against Thomas A. Edison, Edison Phonograph Company, Edison Phonograph Works and National Phonograph Company.
Mr. Bangs: You mean all the suits, Mr. Dyer?
444 The Witness: The suits that Mr. LeBarbier mentioned I was familiar with. I understood there were some local suits, some of those against Jones, and others in New York that I was not very familiar with, and suits in connection with the stock of certain companies that I didn't know very much about, but the suits that he mentioned I was quite familiar with. Q. Which of these companies, except the four I have mentioned, figured in the settlements that we are about to speak of,—I mean the Jones case, for instance? A. None of them.

Q. Do you recall that the suit of the New York 445
Phonograph Company as complainant against these defendants had progressed to a period of time, when a decision was handed down by Judge Noyes? A. I do. Q. Finding the defendants? A. In contempt, yes. Q. Prior to the handing down of that decision, do you know of your own knowledge of any negotiations that were being carried on for the settlement of the case of the New York Phonograph Company and these other outside local interests? A. Yes, such a settlement was reported to me. The Court: You knew of none yourself? The Witness: No. Q. What
446 was done prior to that time? A. Mr. Buckingham, who was in charge of the case— Q. Was he under your supervision? A. Yes, sir. Q. And reported to you? A. Yes, sir. Q. And was guided by you? A. Absolutely.

Q. At any time prior to this decision adjudging them in contempt, did you have any negotiations with any of the defendants, John C. Tomlinson, or Mr. Tompkins, or Mr. Tomlinson, Jr., or Mr. Andem? A. No, sir. Q. Did you have any dealings with these defendants in regard to the settlements? A. You mean the first proposed settlement? Q. Yes. A. No, sir, I did not. Q. After the
447 decision came down did you? A. My recollection is that I did not meet either of the defendants until the day of the actual completion of the settlement, or possibly the day before. Q. What did that consist of? A. What did that consist of? Q. The negotiations? The Court: What do you mean by the completion of the settlement? The Witness: I mean the signing of the papers and paying the money.

Q. Whom did you see at that time? A. Mr. Andem, and I think also Mr. Tompkins. The Court: Where was that? The Witness: At Mr.

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448 Tompkins' office, as I recall, in Wall Street. Yes, there was a check of $5,000 given. Q. Was that at your office? A. I think I probably saw Mr. Tompkins at that time when the check was turned over. The Court: When was that turned over? The Witness: At the signing of this formal contract on the 3d of April. The Court: At the time that that agreement was executed on the 3d of April when the $5,000 was paid, you were in Mr. Tomlinson's office? A. I am not able to say whether in Mr. Tomlinson's office, or Mr. Clarke's office. It was in New York. Q. But, at all events you were present, were you? A. I am quite sure
449 I was. Q. Was there any sum mentioned other than the one of $405,000 in settlement? Mr. Bangs: By whom? Q. By the defendant? Mr. Bangs: When? The Court: At that time. Q. At that time, yes. Mr. Bangs: Fix the time. Q. At that time? A. No, sir, there was not. The Court: Was there at any time? The Witness: I never heard of it.

Q. Was there any sum of $50,000 mentioned at any time for the settlement of the outside local companies, or $25,000? A. Not to my knowledge. Q. Or were any efforts made by the defendants, or any one of them, strenuously to insist upon their
450 getting $25,000 for the outside companies? Mr. Bangs: I object to that, your Honor. Mr. LeBarbier: They say that strenuously they endeavored for days. The Court: What the witness said is, that he never heard of any sum mentioned. If he did not hear $50,000 mentioned, he probably did not hear it strenuously mentioned. Q. Or did you ever hear anything about any specific sum of $375,000? Mr. Bangs: I object unless he tells whether he heard it in the presence of these defendants. Q. Or with anybody at any time anywhere? A. No, sir. Mr. Bangs: I object, if your

Honor please. The Court: He said that he never 451
heard it. Mr. Bangs: All right, if he said that. Q. Where was Mr. Edison at the time of this settlement? A. He was in Florida. Q. Did you report to him? A. I reported to him and it made it rather difficult to get in touch with him. Q. Did you get in touch with him? Mr. Bangs: I object. The Court: What had the absence of Mr. Edison got to do with it? Mr. LeBarbier: Mr. Edison was down in Florida at this time. These people were very anxious to make settlements. He had to get the authority of Mr. Edison, and Mr. Edison sends word back—Mr. Bangs: There is
not any testimony on that. Mr. LeBarbier: I am 452
going to bring it out, if I can, and if not the jury will not notice. Mr. Edison said "Settle the whole thing for $425,000. If you settle the whole thing for $425,000, pay them and end it." And Mr. Edison was a party to the agreement, and he was his attorney. The Court: Of course, if Mr. Edison got rid of the litigation, he did not care whether he paid $425,000 or not. Mr. LeBarbier: But I want to show what led up to it. There was no leading up from any other sum to that amount, but it was one sum of $425,000. Is
that right, Mr. Dyer? Mr. Bangs: I object to 453
that. The Court: That is not a question, that is a recital.

Q. Was there at any time any question of any amount whatsoever, other than the settlement of the entire litigation involving the New York Phonograph Company, and the outside local companies and the Hyman interests for the sum of $425,000? Mr. Bangs: I object to that question. Q. As stated in the agreement? Mr. Bangs: I object to that as leading and as involving a conclusion. Mr. LeBarbier: No, I think that is a

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454 fact, your Honor. The Court: I think the witness has already answered that several times. This witness has said that he heard nothing about $50,000 and that he only knew about the $405,000 and the $20,000, and he did not hear anything about it from anybody. What is the use of going any further into that?

Q. Was there anybody else other than you who had any authority, representing Mr. Edison at that time? Mr. Bangs: I object to that. A. No. Q. You were the only one? A. I was the only one.

Cross Examination by Mr. Bangs:

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Q. Did not Mr. Buckingham represent your interests? A. Mr. Buckingham was our attorney, but he did what I asked him to do. Q. But he represented your interests? A. Certainly. Q. He negotiated the settlements? A. As far as I know, he did.

Mr. LeBarbier: You know that Mr. Buckingham became sick and died, do you not? A. Yes, he became very ill about the time that Noyes' decision was handed down.

Mr. Bangs: Was Mr. Hicks your attorney? Do you know Mr. Louis Hicks? A. Yes, he is dead,
456 also. Q. Was he an attorney in the employment of the National Phonograph Company, or any of the Edison interests? A. He was at one time. Q. At what time? A. I think it was after the settlement you speak of. Q. Was he not retained by the Edison interests in connection with some other litigation prior to the settlement in 1909? A. I would not like to say, I don't remember. Q. You have no recollection on that subject? A. No, not as to the date, but I know as to the circumstances. But when he became connected with us, I don't know.

Adjourned to Wednesday, April 19, 1916, at 457
10:30 o'clock A. M.,

New York, April 19, 1916.

ALBERT W. CLANCY, recalled:

Cross Examination Continued by Mr. Bangs:

Q. We have asked Mr. Sprigg to produce the correspondence between you and Mr. Smythe— A. I haven't any with Mr. Smythe. Q. And he produces a copy of a letter bearing his signature, the date of which I believe is April 29, 1910— 458
Will you take that (handing same to witness)? Mr. LeBarbier: Your Honor, I shall object to this line of testimony, on the ground that it is incompetent, irrelevant and immaterial. The Court: I will allow it. Mr. LeBarbier: Exception. The Witness: I received this letter. Mr. Bangs: I will have that letter marked for identification. Marked, Defendants' Exhibit M for identification. Q. Do you recall having received a letter of the purport of the paper which I now show you (handing witness paper)? A. Yes, sir, I think I received that letter. Mr. Bangs: I will have that 459
marked for identification. Marked, Defendants' Exhibit N for identification.

Q. Did Mr. Smythe accept the money which you sent to him? Mr. LeBarbier: I object to that as immaterial, incompetent and irrelevant. The Court: I will allow it. Mr. LeBarbier: Exception. Q. Did you send Mr. Smythe his proportionate share? A. No, I don't remember of doing it. Q. Haven't you distributed the fund? A. Well, there was some question at the time about it, and I am not certain about that point now, whether it was sent to Mr. Smythe or not.

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Plaintiff's Exhibit 1 for Identiffcation.

484 This is a printed copy of the bill of complaint of the Kentucky Phonograph Company, filed in the U. S. Circuit Court for the District of N. Jersey, with the blanks not fully filled in. A statement of this bill is Plaintiff's Exhibit No. 10-B.

Plaintiff's Exhibit 2 for identification.

This is a printed copy of the bill of complaint of the Missouri Phonograph Company filed in the U. S. Circuit Court for the District of New Jersey, with the blanks not fully filled in. This
485 bill in full is Plaintiff's Exhibit No. 10-A.

Plaintiff's Exhibit 3 for identification.

This is a copy of the affidavit of Edmond Huerstel, verified by him on March 5th, 1906, entitled in the action of the Minnesota Phonograph Company v. Thomas A. Edison & Others, in the U. S. Circuit Court for the District of N. Jersey. A complete copy of a like affidavit is a part of Plaintiff's Exhibit No. 10-H.

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Plaintiff's Exhibit 4.

AMERICAN BOOK COMPANY. 487

New York, Cincinnati, Chicago, Boston,

Atlanta, Dallas, San Francisco.

501 Globe Building, Minneapolis, Minnesota.

Phone Main 3203—J—2

July 22nd, 1909.

Mr. James L. Andem,
c/o Tomlinson & Tompkins,
No. 35 Wall St. New York, N. Y.

My dear Mr. Andem:— 488

Some weeks ago I wrote you a letter concerning phonograph matters and sent it in care of the New York Phonograph Co. I fear it did not reach you.

I have been informed through the Woods Brothers as to your recent victory in the courts.

You can remember that Mr. J. C. Wood and myself always stood loyal to your interests and to the general interest of the contestants in all meetings and conflicts.

Now that matters are coming to a close for settlement I have felt that it was rather unjust to put our company in line with smaller ones and 489 with those who had practically taken no interest in the work for some years. I have always believed in your justice and honesty and am not writing this letter as a criticism, but only as a heart to heart suggestion from one good friend toward another.

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Plaintiff's Exhibit 4.

490 The company organization have authorized me to make a settlement with you.

As I will have business in Washington some time in the first week in August—(likely near the last of the week) I thought it timely that I should run over to New York and make settlement with you and at the same time I would be pleased to have a little visit with you, rehearsing past history.

Please give me an early reply and let me know if the date which I have suggested above will suit you.

The officers of this company now since Mr.
491 J. C. Wood's death are as follows:

Mr. G. L. Wood, Pres.
Mr. J. W. Moore, Sec.
Mr. A. W. Clancy, Treas.
Mr. Guy L. Wood, Gen. Manager.

Hoping that you may some time be able to visit the Twin Cities and enjoy our Minnesota ozone, I am,

Most truly yours,
A. W. CLANCY.

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Plaintiff's Exhibit 5.

301 Woodland Aven., 493
Avon, N. J.
July 27, 09.

My dear Major Clancy:—

Yours of July 22 was forwarded to me here where I am spending the summer. I shall be glad to meet you in New York at Messrs. Tomlinson & Tompkins office 35 Wall Street next week and when you get ready to start and can fix a date if you will telegraph me here I will go to N. Y. and confer with you regarding the payment due to the Missouri Co.

I notified Mr. Wood in California at the time
of the settlement of the N. Y. case, as I did the 494
representatives of all the other companies interested and have since then remitted to them their respective drafts and obtained their releases in full—all except the Mo. and Wis. Companies.

Mr. Goodwin writes me they will have a meeting of their Board and as soon as they pass a Resolution to that effect I shall forward their amt to them.

My letter to Mr. Wood (which he probably sent to you) explained so fully the circumstances under which I had to settle with the Edison people that you must be aware of the facts and
I will not repeat here. I regarded myself as 495
extremely fortunate in being able to "pick up" a respectable sum for the local Companies, and my action has been endorsed by all I have settled with, as I am sure it will be by the Mo. Company when I have the opportunity of seeing you and stating in detail what occurred.

With kindest regards.

Sincerely yours,
JAMES L. ANDEM.

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Plaintiff's Exhibit 6.

Avon, N. J.
Aug. 31, 09.

Maj. A. W. Clancy,
Minneapolis, Minn.

My dear Major:

I wrote a long letter to Mr. Wood, at Santa Cruz, Cal. a couple of months ago, giving a full account of my action in settling with the Edison Company, and how I succeeded in obtaining some recognition by them of the rights of the local Phonograph Companies. No doubt he has forwarded that letter to you, with other papers relating to the Missouri Co., and I wish you would read that letter to your associates in explaining to them the facts relating to the settlement of the local company cases.

I can only say, in addition, that I was satisfied they could never have established their rights, as none of them entered into the "confirmation agreement" with Mr. Edison in 1888 upon the strength of which the N. Y. Co. won its case. Knowing this I considered myself extremely fortunate in being able to secure what I did for them. To pick up a couple of thousand dollars for companies that had been out of business for 15 years, more or less, I regarded as a piece of good luck for which I have received their congratulations. The Ohio Co. fought from 1897 to 1901 to maintain its rights and spent more than $10,000 in court costs and attorneys fees trying to lay a foundation for the recognition of the Western Companies' rights. But the result there was that its business was destroyed and it was put in the hands of a Receiver. Then I packed up my valise and came to N. Y. on borrowed money, and began the 8 years' fight for the N. Y. Co. which resulted in

their favor. The Edison people endeavored to thwart me in every way; their counsel abused me in Court as a blackmailer, and even had me indicted by the Grand Jury at Trenton, N. J. on a charge of "forgery". I was arrested and taken before a U. S. Comr at Newark, and had to give $2,000 bail or be committed to jail. I secured the bail; was tried subsequently before the U. S. Court, the Edison people employing a strong array of counsel to have me found guilty, but the Judge, after the trial, said there was no foundation whatever for the charge and instructed the Grand Jury to find a verdict of "not guilty", which they did.

I refer to this to show you how bitter the fight has been which enabled me to secure this money for the local companies. But I am glad I succeeded in getting it for you, and only regret I could not get more. The reimbursing of the Ohio company for the money it spent in beginning this fight I think was only equitable; had it not begun, no other company would have taken the necessary steps which led to this result.

I hope to see you again whenever you come East and renew the pleasant associations of former years.

Very sincerely yours,
JAMES L. ANDEM.

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Plaintiff's Exhibit 7.

502 301 Woodland Ave.,
Avon, N. J.
June 5, 09.

Mr. C. N. Chadbourn,
17 S. 4th St.,
Minneapolis, Minn.

Dear Sir:—

I enclose copy of letter sent to-day to Mr. Kinkead of Louisville, regarding the settlement of the local Phonograph Co. cases. As soon as the companies send me their assent to the plan of distribution I will mail each of them N. Y. drafts for
503 the respective amounts indicated. Address me as above.

Yours truly,
JAMES L. ANDEM.

Plaintiff's Exhibit 8.

This Exhibit is the letter, dated, June 5th ,1909, Avon, N. Jersey, addressed to R. C. Kinkead, signed by James L. Andem, and set forth in full in Paragraph XV of the Complaint.

Plaintiff's Exhibit 9.

504 AGREEMENT, made this Third day of April, in the year Nineteen Hundred and Nine, between New York Phonograph Company, James L. Andem, individually, and James L. Andem, for and on behalf of the Kansas Phonograph Company, the Ohio Phonograph Company, the State Phonograph Company of Illinois, the Kentucky Phonograph Company, the Missouri Phonograph Company, the Minnesota Phonograph Company and the Wisconsin Phonograph Company, parties of the first part, and Frank L. Dyer, acting for

and on behalf of Thomas A. Edison, the National 505
Phonograph Company, the Edison Phonograph Company, and the Edison Phonograph Works, party of the second part, WITNESSETH:

Whereas the above-named parties of the first part have brought suits in divers jurisdictions against the interests represented by the party of the second part, which suits are now pending; and

Whereas the parties hereto have agreed to settle all such differences, except the causes of action of the New York Phonograph Company and any interest which James L. Andem may have therein, and for which suits have been brought by Samuel F. Hyman, as attorney of record, and are now 506
pending in the Court of Appeals and in the Supreme Court for Westchester County, in all of which suits the New York Phonograph Company is plaintiff and various jobbers and dealers of the National Phonograph Company in the State of New York are defendants; and

Whereas all the parties hereto have agreed to settle and compromise all existing suits and differences (except those hereinbefore mentioned, in which Samuel F. Hyman appears as attorney of record), in consideration of the payment of Four hundred and five thousand dollars ($405,000) 507
cash by the party of the second part to the parties of the first part, Five thousand dollars ($5,000) of which Four hundred and five thousand dollars ($405,000) shall be paid upon the signing and sealing of this agreement, the receipt of which is hereby acknowledged, and the balance thereof,—to wit, the sum of Four hundred thousand dollars ($400,000),—upon the performance of all the conditions hereinafter set forth on the part of the parties of the first part hereto to be performed;

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508 Now, in consideration of the payments made and to be made as aforesaid, and of the premises, and of the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

First. James L. Andem and the New York Phonograph Company covenant that, upon the payment of the sum of Four hundred and five thousand dollars ($405,000), as hereinafter provided, and the performance by the party of the second part of all the covenants and agreements herein contained on his part to be performed, they will cause to be forthwith discontinued, without
509 costs, all of the pending suits in any and all jurisdictions, brought directly or indirectly by the said James L. Andem and the New York Phonograph Company, or either of them, against any of the interests represented by the party of the second part (except the suits hereinbefore mentioned, in which Samuel F. Hyman has appeared as attorney of record for said New York Phonograph Company), and will deliver to the party of the second part valid and effective general releases from said New York Phonograph Company of all claims, demands, actions or causes of action of whatsoever nature, litigated or unlitigated,
510 which it may now have against the party of the second part or the interests represented by him, except the causes of action for which suits have been heretofore brought by Samul F. Hyman, as attorney of record as aforesaid.

Second. The New York Phonograph Company covenants that, upon the payment of the sum of four hundred and five thousand dollars ($405,000), as hereinafter provided, and the performance by the party of the second part of all the covenants and agreements on his part to be performed, it will

(a) Assign to the party of the second part, 511
or his nominees, any and all right, title and interest which it may have in or to any and all patents owned or controlled by the interests represented by the party of the second part, or any of them.

(b) Assign to the party of the second part such portion of the number of shares of the capital stock of the New York Phonograph Company as may be possible, which number of shares, however, shall not be less than two thousand (2,000) shares. Such stock shall be turned over within forty-eight hours (48) after the payment to the
512 holders of record thereof of dividends resulting from this settlement.

(c) Release all claim to and execute a formal consent to the delivery to the party of the second part of the twenty-five hundred (2,500) shares of stock of the Metropolitan Phonograph Company and the twenty-five hundred (2,500) shares of the stock of the New York Phonograph Company now held by the Central Trust Company of New York, as trustee, for delivery as a consideration of the extended licenses involved in these litigations.

(d) Deliver, in so far as it legally can, to such
513 persons as the party of the second part shall designate, all the books, minutes and papers of the New York Phonograph Company now either held by said Company or said Andem, and will also procure, so far as possible the resignation of the Board of Directors and officers of said New York Phonograph Company, and will aid in the transfer of the control of said Company to such person or persons as the party of the second part shall designate.

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514 (e) Procure and deliver to the party of the second part a good, valid and effective general release and consent to this settlement, executed by Tomlinson, Tompkins & Tomlinson.

(f) Sign a stipulation consenting that the decree for an accounting heretofore entered in the suit brought by it against the National Phonograph Company and others in the United States Circuit Court for the Southern District of New York be vacated, and that the injunction heretofore issued in said suit be dissolved, and that said suit be discontinued, without costs.

(g) Execute a consent that all bonds given by
515 any of the parties represented by the party of the second part hereto in any of the litigations hereinbefore mentioned, or any other matters, shall be cancelled of record, except bonds in the suits heretofore mentioned, wherein Samuel F. Hyman is attorney of record.

(h) Execute in favor of the National Phonograph Company a waiver of its portion of the fine directed to be paid by the National Phonograph Company in the contempt proceeding arising out of the alleged violation of the above-mentioned injunction.

516 (i) Procure and deliver to the party of the second part good, valid and effective general releases executed by the New York Phonograph Company and James L. Andem, individually, and James L. Andem in behalf of all the companies hereinbefore mentioned as represented by him in favor of Frederick P. Ott and the Ott Manufacturing Company, a corporation of the State of New Jersey.

(j) Procure in writing a ratification by the Executive Committee and also of the Board of Directors of the New York Phonograph Company of the matters herein set forth relating to this settlement.

Third. The said James L. Andem covenants 517
and agrees that, upon the payment of the sum of Four hundred and five thousand dollars ($405,000), as hereinafter provided, and the performance by the party of the second part of all the covenants and agreements herein contained on his part to be performed, he will.

(a) Deliver to the party of the second part an effective and authoritative general release in favor of all the interests represented by the party of the second part, executed by said Andem, whereby he shall release to the party of the second part all the rights, actions, causes of action, in-
518 terests and claims of every kind owned, held or asserted by him, in his own behalf or in behalf of the following Companies: The Kansas Phonograph Company, the Ohio Phonograph Company, the State Phonograph Company of Illinois, the Kentucky Phonograph Company, the Missouri Phonograph Company, the Minnesota Phonograph Company and the Wisconsin Phonograph Company, and any and all other companies which said James L. Andem has authority to represent and settle for.

(b) Deliver to the party of the second part
519 good, valid and effective assignments of all his right, title and interest in and to any and all recoveries or rights of recovery arising by virtue of his contracts with any and all of said companies (except that he shall not be required to assign any interest that he may have in and to any of the moneys paid on the settlement contemplated by this agreement or in and to any interest that he may have in the suits prosecuted in the Supreme Court of Westchester County by Samuel F. Hyman, and hereinbefore referred to, wherein the New York Phonograph Company is plaintiff).

(c) Deliver to the party of the second part

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consents to discontinue all of said suits, except those wherein the New York Phonograph Company is plaintiff, without costs, including the minority stockholders' suit brought by certain stockholders of the New England Phonograph Company in the New Jersey Court of Chancery.

(d) Deliver to the said party of the second part an agreement wherein he shall covenant that he will not bring, directly or indirectly, in his own behalf, or in behalf of others, any suit or suits of any kind whatsoever, against the party of the second part or any of the interests represented by him herein, or be interested, directly or indirectly, in any such suit.

(e) Ratify and confirm all the releases to be given by any or all of the parties of the first part, as herein contemplated, and to which such ratification and confirmation may be desired by the party of the second part.

(f) Procure and deliver to the party of the second part, good, valid and effective general releases from the law firm of Ferguson & Ferguson, who appear as solicitors of record in various suits brought against the interests represented by the party of the second part hereto in the Circuit Courts of the United States for the District of New Jersey and elsewhere.

(g) Deliver to the party of the second part satisfactory evidence of the satisfaction of any and all claims of Mr. Murray, Mr. Hodge and Mr. Huerstel on account of services in any of the litigations or differences between any of the parties hereto.

Fourth: That the party of the second part agrees that

(a) That the stock now owned or controlled by the interests represented by him of the New York

Phonograph Company, aggregating at least six thousand, nine hundred and forty-two (6,942) shares, and the stock now held by the Central Trust Company, referred to in subdivision (c) of paragraph numbered "Second" of this agreement, shall not be entitled to participate in or receive any of the moneys paid to the parties of the first part under this settlement, and that proper agreements to carry this into effect shall be executed by the stockholders in whose names the said stock shall stand.

(b) He will procure and deliver to James L. Andem and the New York Phonograph Company a general release running to said Andem and said New York Phonograph Company from William Pelzer and the National Phonograph Company.

Fifth. The parties hereto hereby agree that they, and each of them, will execute any and all other papers that may be reasonably necessary to carry out the purposes of this settlement, and that all the papers relating to this settlement shall be subject to the approval of Hon. Edward W. Hatch and John C. Tomlinson, acting as counsel for the respective parties hereto.

Sixth. The parties hereto hereby agree that all of the moneys to be paid hereunder and all the covenants and agreements to be performed by any or all of the parties hereto, except where a different time is hereinabove expressed, shall be performed and completed on or before Friday, the 9th day of April, 1909, at six o'clock p. m., unless the parties hereto shall consent in writing to the further extension of the time of performance of this agreement. The closing of this contract shall take place at the office of the National Phonograph Company, No. 10 Fifth Avenue, in the Bor-

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Plaintiff's Exhibit 9.

526 ough of Manhattan, City of New York, or at such other place as the parties hereto may hereinafter agree upon in writing.

Seventh. The party of the second part agrees that he will, upon the closing of the settlement set forth in this agreement, deliver to the parties of the first part, or their duly authorized agents, checks in the aggregate amount of four hundred and five thousand dollars ($405,000), provided that the parties of the first part shall have performed all the covenants and agreements herein contained on their part to be performed.

Eighth. It is mutually understood and agreed
527 that, if the papers prepared by Tomlinson, Tompkins & Tomlinson in connection with this settlement shall not be approved by Edward W. Hatch, counsel for the party of the second part, and the parties of the first part refuse or are unable to have papers in the form proposed by Edward W. Hatch signed and executed, and for this reason the party of the seond part fails to pay the four hundred and five thousand dollars ($405,000) to be paid hereunder by or before six o'clock p.m. on April 9, 1909, then this agreement shall be null and void, and the five thousand dollars ($5,000) paid
528 hereunder by the party of the second part to the parties of the first part, shall be returned to said party of the second part, and the rights of the parties hereto shall be the same as they would have been had this agreement never been made.

In witness whereof the New York Phonograph Company has caused these presents to be executed by James L. Andem, its duly authorized agent, and its corporate seal to be hereto affixed by its

Plaintiff's Exhibit 10.

Secretary, and the remaining parties
ment have signed and sealed the san
year first above written.

NEW YORK PHONOGRAPH C
By Jame

In the presence of:—
Geo. E. Allen,
Jane M. Lawrence.

JAMES L. ANDEM (L. S.
and for the Phonogra
tioned in the first par
agreement as being r
him.

FRANK L. DYER, (L. S
behalf of Thos. A. Ed

Corporate Seal N. Y. Phono. Co.

Phonograph Company,
graph Works and E
graph Company.

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Research Library

Plaintiff's Exhibit 10.

532 Tomlinson, Tompkins & Tomlinson,

John C. Tomlinson,
Millard F. Tompkins,
John C. Tomlinson, Jr.

Counsellors at Law Mills Building, 35 Wall Street.

New York, April 22, 1909.

Mr. Robert C. Kinkead,
Kentucky Phonograph Company.
Louisville, Ky.

533 Dear Sir:—

Mr. Andem has requested us to inform the various local phonograph companies in regard to the settlement affected through us, as counsel for the New York Phonograph Company, in their suit against the National Phonograph Company. This litigation has been in the Courts with varied success, for a number of years, and was finally settled. Mr. Andem, as a feature of the settlement succeeded in compelling a recognition of the claims of seven local companies which had authorized Mr. Andem to represent them. None of these companies, in our opinion, would have been able
534 to successfully prosecute any claim against the National Phonograph Company or Mr. Edison, as they were not in the same position as the New York Company.

But following Mr. Andem's instructions we insisted upon some recognition by the Edison interests of the rights of these outside local companies, before consenting to a settlement of the

New York cases, and finally, after effort, we compelled the payment on their behalf.

After deducting Mr. Andem's pe remains $20,000 for distribution seven companies and Mr. Andem d form you that as soon as instr ceived as to whom this money shou this amount will be distributed in tions to the several companies conc

Very truly yours,

TOMLINSON, TOMPKINS &
JCT/H.

Raymond R. Wile
Research Library

Plaintiff's Exhibit 13.

670 April 2, 1909.

Messrs. Tomlinson, Tompkins & Tomlinson,
35 Wall Street,
New York.

Gentlemen:—

Your letter under date of March 27th, 1909, to the National Phonograph Company, containing a proposition of settlement of the litigation and differences pending between the New York Phonograph Company, the National Phonograph Company and other corporations and persons for the
671 sum of $425,000.00, or, in an alternative contingency, of including the claim of Mr. Hicks for the sum of $475,000.00, received.

We understand that you undertake upon an acceptance of the first sum above named to procure and execute all documents and papers that shall be necessary to settle and adjust and to vest in the National Phonograph Company, or such persons or corporations as it may name, all of the right, title, interest and claim of every nature and description held or asserted by the New York Phonograph Company, or by Mr. Andem or by any
672 other person or corporation against it; the purpose of the proposed settlement being to wipe out and discharge every claim of the New York Phonograph Company by every person interested therein of the property and rights arising out of the contracts, the subject of litigation in the United States Circuit Court for the Southern District of New York, in the action of New York Phonograph Company against the National Phonograph Company and others, and to release to and assign all rights and interests possessed by the New York Phonograph Company and its stockholders. The stock interests so to be transferred

are to be such number of shares as
by you but which shall not be l
thousand shares, and also to releas
be delivered the five thousand share
by the Central Trust Company of
trust for delivery as a considerati
tended licenses.

This settlement is not to embra
of Mr. Hyman in the actions in whi
as attorney against jobbers and de
National Phonograph Company. T
Phonograph Company and any otl
corporation in interest is to transf
to the National Phonograph Compa
other person or corporation as it sl
the right, title and interest of tl
Phongraph Company, or of Mr. And
other person in and to any right of
they may have or be interested in
with said actions.

The settlement is also to embrac
release executed by Mr. Andem, wh
so to do, of all rights, liabilities,
claims of every description held o
behalf of other local phonograph
called, who have brought suit in
tions, or who have made claims
National Phonograph Company for
arising out of the contracts held
panies or corporations relating to th
and territory in which by said c
were authorized to operate.

The foregoing proposed settlement
as a discontinuance and settlement,
of every cause whatsoever in wha
dicition it may have been brought, w

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Research Library

Plaintiff's Exhibit 13.

are to be such number of shares as are controlled by you but which shall not be less than two thousand shares, and also to release and cause to be delivered the five thousand shares of stock held by the Central Trust Company of New York in trust for delivery as a consideration for the extended licenses. 673

This settlement is not to embrace the claims of Mr. Hyman in the actions in which he appears as attorney against jobbers and dealers with the National Phonograph Company. The New York Phonograph Company and any other person or corporation in interest is to transfer and assign to the National Phonograph Company, or to such other person or corporation as it shall direct, all the right, title and interest of the New York Phongraph Company, or of Mr. Andem, or of any other person in and to any right of recovery which they may have or be interested in in connection with said actions. 674

The settlement is also to embrace an effective release executed by Mr. Andem, who is authorized so to do, of all rights, liabilities, interests and claims of every description held or asserted on behalf of other local phonograph companies, so-called, who have brought suit in other jurisdictions, or who have made claims against the National Phonograph Company for any liability arising out of the contracts held by such companies or corporations relating to the phonographs and territory in which by said contracts, they were authorized to operate. 675

The foregoing proposed settlement is to operate as a discontinuance and settlement, without costs, of every cause whatsoever in whatsoever jurisdicition it may have been brought, with the excep-

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Plaintiff's Exhibit 13.

676 tion, as hereinbefore noted, of the Hyman cases, in which cases and each of them the New York Phonograph Company is to duly execute discontinuance of all of said actions, and to release and discharge all securities of every name and nature whether evidenced by bonds or otherwise.

The New York Phonograph Company is to deliver to such person or persons all its books, minutes and papers either held by it or by Mr Andem and to procure, so far as possible, the resignation of its Board of Directors and officers and to aid in the transfer of the control of said corporation to such person or persons as the
677 National Phonograph Company, or any person acting on its behalf, may designate.

Upon this settlement the New York Phonograph Company and Mr. Andem, or any other person or corporation having any interest therein, shall make such adjustment of their rights in the litigation against the jobbers and dealers in the actions brought by Mr. Hyman as shall be equitable and just to both and to all parties concerned, and the New York Phonograph Company is to execute releases to all of the defendants in said actions so brought by Mr. Hyman to the jobbers and dealers defendants therein as shall release
678 them and each of them from all liability.

It is understood that the necessary papers and documents to carry into effect the scheme generally outlined in your letter under date of March 27th, and generally outlined above, shall be made and drawn subject to the approval of the counsel representing the respective interests on each side.

With this general understanding we are authorized to accept your offer and to pay to you upon the execution and delivery of the required papers the sum of $425,000.00.

Until the settlement herein proposed shall be

Plaintiff's Exhibit 15.

finally consummated, it is understood as a con- 679
dition made by you and accepted by us, that such proposed settlement is without prejudice to the rights and interests of either party to any pending litigation and that no stay of proceedings of any kind will be granted by either party to said litigation and that so far as the litigation herein mentioned is concerned, or any proceeding taken by either party thereto, they are to proceed as though the matter of the settlement were not under consideration.

It is understood that the parties hereto shall immediately take the matter of the settlement
under advisement and proceed as speedily as 680
possible to a consummation.

Very truly yours,
ROBINSON, BIDDLE & BENEDICT,
Solicitors for National Phonograph Co. and others.

Edward W. Hatch,
Counsel.

Plaintiff's Exhibit 14.

Check No. 17,741, dated April 8, 1909, drawn 681
by the National Phonograph Company to the order of the New York Phonograph Company, for $106,138.60 on the Union National Bank, Newark, N. J. Is endorsed New York Phonograph Company by Wm. Fahnestock, Treasurer, and is marked "paid."

Plaintiff's Exhibit 15.

Is in all respects the same as Plaintiff's Exhibit No. 14, except it is No. 17,742, and is for the sum of $20,000.

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Defendants' Exhibit G.

772 Mills Building,

35 Wall Street, New York.

May 12, 1909.

Messrs. Netherton & Torchiana,
First National Bank Bldg.,
Santa Cruz, California.

Dear Sirs:

We have delayed answering your favor of May 3 as Mr. Tompkins of our firm, who is looking after this matter, has been ill for several days.

The United States Circuit Court of Appeals, in
773 the decision which you mention, passed solely upon the construction of the injunction which the New York Phonograph Company had previously secured. No other question was touched upon by them and Judge Noyes, who wrote the opinion, subsequently informed the attorneys interested that it was not the intention of the Court to pass upon the rights of any other company or to construe in any way the contracts between the North American Phonograph Company and the New York Phonograph Company.

A discussion of that question was foreclosed by the issuance of the injunction and its affirm-
774 ance on appeal and all that remained for the Circuit Court of Appeals to do was to construe the injunction, and this they did.

In the Court below Judge Wallace, who represented the National Phonograph Company, attempted to attack the correctness of the rulings previously made in that litigation, and this he did so successfully as to convince Judge Hazel (who had originally heard the case) that the rights of the New York Phonograph Company were limited solely to phonographs which embodied certain earlier Edison patents most of

which were no longer in use and which we be- 775
lieved could be discarded by them practically at any time.

The Circuit Court of Appeals refused to be drawn into this discussion, and simply construed the injunction.

Of course, if any of the suits commenced by Mr. Andem on behalf of the local phonograph companies were brought to trial, the question argued by Judge Wallace would have been open for discussion and there was a possibility that the Circuit Court in New Jersey and the Circuit Court of Appeals in other circuits might rule 776
differently.

Furthermore, the National Phonograph Company intended to apply to the Supreme Court of the United States for a writ of certiorari to review the decision in the New York case construing the injunction. The decree there also was merely an interlocutory one and directed an accounting, and under the rulings of the Supreme Court no appeal was open.

Had we gone on with an accounting and obtained a final decree, they might have appealed to the Circuit Court of Appeals and might also have obtained permission to review the decision 777
in the Supreme Court of the United States.

We understood that practically nothing had been done in the Missouri case except the filing of the bill of complaint and there appeared to be years of endless litigation in the suit unless a settlement was arranged.

Moreover, Mr. Andem informs us that the facts in the New York case were different from those in the other cases, as the New York Company and the New England Company had contracts confirming their earlier rights, made subsequent to the making of the original contract with the North American Phonograph Company.

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Defendant's Exhibit H.

778 We enclose herewith a copy of the opinion, as requested, which has not yet been reported, and we believe that the information given above presents some of the main reasons why Mr. Andem made the settlement on the basis indicated.

Yours very truly,
TOMLINSON, TOMPKINS & TOMLINSON.
MFT/M.

Defendants' Exhibit H.

Letter Head the same as that in Exhibit E.

779 Milbank, S. D., July 22, 1909.

Mr. James L. Andem,
No. 301 Woodland Ave.,
Avon, N. J.

Dear Sir:—

Your letter of June fifth sent me at Santa Cruz was duly received, and I have taken the matter up with some of those interested here and find that they are very much disappointed at the outcome in two respects; first, at the small total amount for which you made settlement with the
780 Edison Company and, secondly, the small share it is proposed to pay the Missouri Company, since that Company has not only advanced the money to prosecute the case, but has done what it could to encourage you, while other companies seem to have done very little and, further, they do not understand why the Ohio company should receive such a large proportion. However, having got other matters somewhat out of the way, I will take the phonograph matter up again with the officers.

Please write me at Milbank.

Yours truly,
G. A. WOOD.

Defendants' Exhibit I.

Business Established 1884 781

Associated with the
Farmers Bank
of Milbank.

G. L. WOOD FARM MORTGAGE CO.
(Incorporated),
Dealers in High Grade Farm Loans.

Milbank, S. D., August 2nd, 1909.

Major A. W. Clancy,
Minneapolis, Minn.

782

Dear Sir:

You are hereby authorized to make full settlement with James L. Andem for monies advanced him by J. C. Wood for and in the prosecution of the case of the Missouri Phonograph Co.; also to make full settlement for the amount of money due the Missouri Phonograph Co.

Signed G. A. WOOD,
Pres.
J. W. MOORE,
Secy.

783

Courtesy of Wile Research Library

Opinion.

802 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MISSOURI PHONOGRAPH COMPANY,
Plaintiff,

against

JOHN C. TOMLINSON, and others.
Defendants.

803

Carroll Sprigg, Attorney for Plaintiff, (Charles E. LeBarbier, counsel).

Guthrie, Bangs & Van Sindersen, Attorneys for Defendants, (Francis S. Bangs, Counsel).

AUGUSTUS N. HAND, District Judge:

Plaintiff moves to set aside a verdict for the defendants, John C. Tomlinson and Millard F. Tompkins, rendered at the close of plaintiff's case by direction of the Court: The motion must be
804 denied.

These defendants were solicitors of record in a suit brought by the New York Phonograph Company in the United States Circuit Court for the Southern District of New York against Thomas A. Edison, Edison Phonograph Company, Edison Phonograph Works and National Phonograph Company. There were brought in the United States Circuit Court for the District of New Jersey, seven similar suits against the same defendants in which the several complainants had solicitors of record, other than these defendants.

James L. Andem, named as a defendant in 805
this action but one who has never appeared, or been served, held powers of attorney from the seven complainants who sued in New Jersey and had authority to settle the suits. One of these suits was brought by the Missouri Phonograph Company, the plaintiff in this action, and in that suit, Andem had the right to settle for a sum not less than $40,000. In two of the other suits he could not settle for less than $20,000 each, and in two others for not less than $10,000 each. In both the New York suit and the seven New Jersey suits each complainant contended that it had a subsisting license from Thomas A. Edison, 806
or his companies, which gave it an exclusive right to use Edison phonograph patents for a certain territory. There was no proof as to the merits of the New Jersey suits, they never went to trial, and it is impossible to determine whether the licenses were enforceable, or what was the value of any license if it still subsisted. The New York suit was bitterly contested, and finally resulted in a decision of the Circuit Court of Appeals for the Second Circuit establishing the validity of an exclusive territorial license which would deprive Edison of the right to sell his phono-
graphs in New York unless the Supreme Court 807
after granting a writ of certiorari should reverse the decree. This being the case, the New York Phonograph Company and Andem, as attorney for the other seven companies, settled all the actions for $425,000 by wrtten agreement. This agreement provided that the New York Phonograph Company should ratify the agreement by resolution of its board of directors and grant a release of all its claims and that Andem should release the claims of the other seven companies for which he held powers of attorney. In these

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808 cases Andem had a 60% interest in the settlement under his agreements with the several companies, except that of the Kentucky Company where his interest was 40%. The directors of the New York Phonograph Company authorized a settlement for $375,000 and ratified the execution of the contract. It is to be noted that if the New York Phonograph Company received $375,000 the $50,000 which remained was insufficient to pay the minimum sums for which Andem was authorized to settle for some of the other seven companies. Under these circumstances, a letter was written by the firm of Tomlinson, Tompkins
809 & Tomlinson to the Missouri Phonograph Company in which it was stated that Andem had requested them to inform the various local phonograph companies in regard to the settlement effected through the firm as counsel for the New York Phonograph Company in their suit against the National Phonograph Company, and that after a most earnest effort they compelled the payment of $50,000 on behalf of the outside local companies. The letter went on to state that after deducting Andem's percentage there remained $20,000 for distribution among the seven local companies, and that Andem desired the writer
810 to say that as soon as instructions were received as to whom this money should be paid over "this amount will be distributed in proper proportions to the several companies concerned." Thereafter Mr. Clancy, a representative of the Missouri Phonograph Company, was informed, through a letter from Andem, that after a series of negotiations between the Edison Companies and the New York Phonograph Company looking towards a settlement, the figure of $375,000 was finally reached, and that after strenuous efforts, Tomlinson, Tompkins & Tomlinson succeeded in raising

the amount to be paid to the other seven com- 811
panies to $50,000. Andem also said in this letter that he took the responsibility of accepting the terms on behalf of the companies he represented, and that the settlement was made.

Missouri Phonograph Company sought advice of California counsel as to the desirability of entering into this settlement, but no real investigation was made by the California lawyers and I shall not decide the case upon any theory that the Missouri Phonograph Company ought to lose anything if by reason of the fact that it made, or seriously attempted, an independent investiga- 812
tion, it suffered damage from misrepresentation.

I think the whole matter comes down to the question whether the Missouri Phonograph Company was damaged by the failure of the defendants to tell them in the letter of April 22, 1909, that the settlement was a single agreement to pay $425,000, and not a separate agreement to pay $375,000 to the New York Phonograph Company, and $50,000 to the other companies. It seems evident from the testimony that the New York Phonograph Company would not settle for less than $375,000 and that such was the resolution of their board of directors. It does not appear that 813
anything more than a resolution authorizing the signature to the agreement by the New York Phonograph Company and a general release from the latter was required by the Edison Company. My opinion is that when the agreement was executed and the release given, the New York Phonograph Company was bound, but the other companies for which Andem had signed, without obtaining the minimum amount prescribed under his powers of attorney were not bound until after his action had been ratified by his clients.

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Opinion.

814 A representative of the Missouri Phonograph Company came east, agreed to take 40% of $5,000 as its share of the settlement, leaving the remaining 60% as the commission of Andem. If the Missouri Phonograph Company had been informed that the settlement was for $425,000, I find no reason to believe that there was anything which it could have done except repudiate the same upon the ground that no specified sum was payable to it, and Andem was only authorized to settle for $40,000. Andem never claimed, so far as I am aware, that the Missouri Phonograph Company was not at liberty to do this. He had
815 merely said that the Edison Companies would pay no more and that the share of the New York Phonograph Company was $375,000 and that the balance was available for the other seven companies. If this statement was inaccurate, that fact does not establish that the interest of the Missouri Phonograph Company in the settlement is to be measured by the authority of Andem to settle for $40,000. I can find no proof that such was its interest, nor can I find any proof that it would have recovered more than $5,000 if it had continued the litigation in the New Jersey Court.

816 For this reason the conclusion I reached at the trial seems to me to have been correct, and the motion to set aside the verdict directed for the defendants must be denied.

Dated, June 2, 1916.

A. N. H.,
D. J.

Denial of Motion to Set Aside Verdict and for a New Trial.

817

At a Stated Term of the United States District Court for the Southern District of New York, held in the United States Court House, in New York City, in the State of New York, on the 30th day of June, 1916;

Present:

Hon. AUGUSTUS N. HAND,
District Judge.

818

THE MISSOURI PHONOGRAPH COMPANY,
Plaintiff,

against

JOHN C. TOMLINSON, MILLARD F. TOMPKINS, JOHN C. TOMLINSON, JR., & JAMES L. ANDEM,
Defendants.

The Plaintiff herein, after a dismissal of the complaint as against the defendants John C. Tomlinson, Millard F. Tompkins, and John C. Tomlinson, 819
Jr., by the Court on the motion of the attorneys for the said defendants, and after a direction by the Court of a verdict for the defendants, John C. Tomlinson, and Millard F. Tompkins, having made a motion upon the minutes, in open Court, on April 20th, 1916, to set aside the verdict and for a new trial, and thereafter said motion to set aside the verdict and for a new trial having come on duly to be heard on the 25th day of May 1916, the Court having on April 20th, 1916 reserved decision on said motion; and after hearing Charles E. LeBarbier, of counsel, and Carroll Sprigg, attorney for the plaintiff, in support of the motion, and Francis S. Bangs,

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of counsel for the defendants, John C. Tomlinson and Millard F. Tompkins, in opposition thereto, and due deliberation being had thereon; and the Court having filed its opinion in writing with the Clerk of this Court on the 3rd day of June, 1916, denying the said motion of the plaintiff;

NOW ON MOTION of Guthrie, Bangs & Van Sinderen, attorneys for the defendants, IT IS ORDERED, that the said motion of the plaintiff be and the same is hereeby denied.

AUGUSTUS N. HAND,
U. S. D. J.

Approved as to form;
Carroll Sprigg, Atty. for plf.
Guthrie, Bangs & Van Sinderen, Attys. for defts. Tomlinson and others

Judgment.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE MISSOURI PHONOGRAPH COMPANY,
Plaintiff,
against
JOHN C. TOMLINSON, and others,
Defendants.

L. 9-277.

The issues in this action having been regularly brought on for trial before Honorable Augustus N. Hand, District Judge, and a Jury at a stated term of this Court held on the 14th, 17th, 18th, 19th & 20th days of April, 1916, at the United States District Court and Post Office Building in

the Borough of Manhattan, City of New York, and the Plaintiff herein appearing by Carroll Sprigg, Esq., its attorney, and Charles E. LeBarbier of counsel, and the defendants John C. Tomlinson, Millard F. Tompkins, and John C. Tomlinson, Jr., appearing by Guthrie, Bangs & Van Sinderen, their attorneys, and F. S. Bangs of counsel, and the defendant James L. Andem not having been served, and the allegations and proofs on the part of the plaintiff having been heard and considered, and it appearing that thereafter on the 19th day of April, 1916, at the close of plaintiff's case, counsel for the defendants, John C. Tomlinson, Millard F. Tompkins and John C. Tomlinson, Jr., having moved for the dismissal of the complaint, and the plaintiff's attorney having consented that the complaint be dismissed as against the defendant John C. Tomlinson, Jr.; and thereafter on the 20th day of April, 1916, the Court having dismissed the complaint and having directed a verdict for defendants John C. Tomlinson and Millard F. Tompkins, the Jury, by direction of the Court, rendered in the verdict for the defendants John C. Tomlinson and Millard F. Tompkins with costs, and the plaintiff's attorney having moved to set aside the verdict and for a new trial, and the said motion having been denied, and an order denying the same having been made and filed on the 1st day of July 1916.

NOW ON MOTION of Guthrie, Bangs & Van Sinderen, attorneys for the defendants John C. Tomlinson, Millard F. Tompkins and John C. Tomlinson, Jr.,

IT IS ADUDGED that the said defendants recover of plaintiff the sum of Thirty-seven & 65/100 ($37.65) costs, and that execution issue therefor.

Judgment signed this 5th day of July 1916.

ALEX. GILCHRIST Jr.,
Clerk.

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Docket Entries.

826 July 20, 1912—Filed Praecipe and issued summons.
Nov. 11, 1912—Filed Opinion (Ward, J.) motion to make complaint more definite, etc., denied.
Nov. 15, 1912—Filed Complaint.
Nov. 16, 1912—Filed Order denying motion to make complaint more definite, etc.
Nov. 18, 1912—Filed Affidavit and Notice of motion to make complaint more definite, etc.
Dec. 14, 1912—Filed Answer.
Jan. 11, 1913—Filed Bond for costs (New England Casualty Co.) $250.
May 19, 1914—Filed Note of issue for June, 1914, Term.
827 May 19, 1914—Filed Notice of trial.
Dec. 22, 1914—Filed Notice of trial for January, 1915, Term.
Dec. 23, 1914—Filed Note of issue for January, 1915, Term.
Dec. 23, 1914—Filed Notice of Trial.
Apr. 5, 1915—Reserved generally on Calendar.
Dec. 9, 1915—Filed note of issue for January, 1916, Term.
Dec. 9, 1915—Filed Notice of trial.
Feb. 8, 1916—Filed Stipulation and Order setting case for trial on February 23, 1916.
828 Apr. 14, 1916—A. N. Hand, J., Trial begun.
Apr. 19, 1916—Complaint dismissed as to John C. Tomlinson, Jr.
Apr. 20, 1916—Motion to dismiss complaint granted and verdict directed for defendants, John C. Tomlinson and Millard F. Tompkins. By direction of Court, verdict for defendants, John C. Tomlinson and Millard F. Tompkins. Motion to set aside verdict and for a new trial denied.
June 3, 1916—Filed Opinion No. 160 (A. N. Hand); motion to set aside verdict denied.

July 1, 1916—Filed Order denying motion for a 829
new trial.
July 5, 1916—Filed Judgment for defendants for $37.65 No. 2131.
Aug. 1, 1916—Filed Stipulation and Order that Plaintiff have two months from Aug. 4, 1916 within which to file Bill of Exceptions.
Aug. 3, 1916—Filed Affidavit and Order that plaintiff have thirty days from July 5, 1916 within which to file Bill of Exceptions.
Oct. 4, 1916—Filed Bill of Exceptions.
Dec. 1, 1916—Filed Petition for writ of error and assignment of errors.
Dec. 1, 1916—Filed Order granting writ of error. 830
Dec. 1, 1916—Issued and filed writ of error.
Dec. 14, 1916—Filed bond on appeal, National Surety Co., $250.
Dec. 22, 1916—Filed Citation (L. Hand J.).
Dec. 22, 1916—Filed Consent and Order extending time to file record on appeal to Feby. 28, 1917.
Feb. 27, 1917—Filed Consent and Order extending time to file record on appeal to March 23, 1917.
Feb. 27, 1917—Filed consent order extending time to file record on appeal to Mar. 23, 1917.
Mar. 19—Filed consent order extending time to 831
file record on appeal to April 23, 1917.
April 20—Filed consent order extending time to file record on appeal to June 11, 1917.
June 8—Filed consent order extending time to file record on appeal to August 7, 1917.

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